

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Guam Cellular and Paging, Inc. d/b/a)	
Saipancell)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
on the islands of Saipan, Tinian, and Rota)	
in the Commonwealth of the Northern)	
Mariana Islands)	

To: Wireline Competition Bureau

**Fifth Amendment to Petition for Designation as an Eligible
Telecommunications Carrier**

Guam Cellular and Paging, Inc. d/b/a Saipancell (“Saipancell”), by counsel, hereby amends its Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) on the islands of Saipan, Tinian, and Rota. Specifically, by this amendment Saipancell provides additional public interest arguments in support of its Petition.

I. BACKGROUND

Saipancell filed its Petition for Designation as an ETC in the Northern Mariana Islands (the “Petition”) on February 19, 2002. Saipancell’s Petition did not include Tinian and Rota, which are inhabited islands in the Northern Mariana Island chain. On October 15, 2002, Saipancell amended its Petition to add the island of Tinian to its requested ETC area. Subsequently, upon receiving authorization from the FCC to serve the island of Rota, Saipancell amended its Petition to include Rota in its requested ETC area.¹

¹See Fourth Amendment to Petition for Designation as an Eligible Telecommunications

Because Saipancell's application now proposes an ETC service area that encompasses the entire study area of the Micronesian Telephone Company ("MTC"), and MTC is a rural carrier, the Commission must find such designation to be in the public interest.² By this amendment, Saipancell supplements its public interest showing.

II. DEFINING THE PUBLIC INTEREST

Carrier, filed January 22, 2003.

²47 U.S.C. §214(e)(2).

The public interest must be determined by following guidance provided by Congress in adopting the Telecommunications Act of 1996 (“1996 Act”) and the FCC in its enabling orders.³

The overarching principles embodied in the 1996 Act are to “promote competition and reduce regulation...secure lower prices and higher quality services...and encourage the rapid deployment of new telecommunications technologies.”⁴ In its implementing orders, the FCC ruled that the pro-competitive and deregulatory directives from Congress required universal service support mechanisms to be competitively neutral and portable among eligible carriers.⁵

The Commission must determine whether designation of Saipancell as an ETC will promote the principles embodied in the 1996 Act, specifically the goal of ensuring that consumers in rural, insular, and high-cost areas “have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”⁶

³Pub. L. No. 104-104, 110 Stat. 56 (1996); *See also*, *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997) (“*First Report and Order*”); *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd 20432 (1999) (“*Ninth Report and Order*”); *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Report and Order*, 16 FCC Rcd 11256 (2001). *See also* *NAACP v. FPC*, 425 U.S. 662, 669 (1976); *accord, e.g., Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1427 (D.C. Cir. 1983); *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 & n.22 (D.C. Cir. 1978).

⁴*Id.* (preamble).

⁵*First Report and Order*, 12 FCC Rcd at 8801, 8861-62; *Ninth Report and Order* 14 FCC Rcd 20432, 20480.

⁶*See* 47 U.S.C. § 254(b)(3).

III. DESIGNATION OF SAIPANCELL AS AN ETC IS IN THE PUBLIC INTEREST.

As shown below, numerous public interest benefits will accrue to consumers in the Northern Mariana Islands as a result of Saipancell's designation.

A. Saipancell's designation will create important health and safety benefits.

Citizens in rural areas depend on mobile phones more and more to provide critical communications needs. It is self-evident that every time Saipancell adds a cell site or increases channel capacity, the number of completed calls, including important health and safety calls, will increase. Universal service funding will assist Saipancell in making necessary improvements to its network, thereby furthering important health and safety objectives.

All wireless carriers are required to implement Phase II E-911 service over the next several years. E-911, which permits a caller to be located and tracked, will be useless in areas where RF is weak or non-existent. Thus, for every cell site that Saipancell constructs, the reliability and performance of Saipancell's 911 service will improve. Customers in urban areas take for granted that important health and safety calls are routinely completed. In rural areas, including parts of Saipan, Tinian and Rota, this is not the case today. As facilities improve, so too will citizens' access to vital communications facilities.

B. Designation of Saipancell will benefit consumers.

Telephone monopolies are artificial creations of government regulation. The provision of high-cost support to only one carrier stifles innovation and customer choice. In amending Section 214 to provide for competitive ETCs, Congress sought to replace artificial monopolies with competitive markets. In markets where consumers have choices, competitors are forced to improve service quality, prices and offerings. In the Northern Mariana Islands, construction of new wireless facilities will greatly expand the reach of important health and safety communications, as discussed above. Improved telecommunications will enable businesses to

operate more efficiently. Saipancell will be capable of offering service quality that is competitive with MTC, along with features that customers may not receive from MTC.

Designation of Saipancell as an ETC will provide customers with a choice among carriers and service features, and will promote the delivery of innovative services and new technologies.

The FCC has recognized that, “Designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”⁷ Currently MTC is the only ETC serving consumers in the Northern Mariana Islands. By designating Saipancell as an ETC, the Commission will expand the range of basic universal service offerings available to rural consumers throughout the Northern Mariana Islands.

Saipancell will provide to the residents of the Northern Mariana islands new services and technologies comparable to those provided in urban areas. Saipancell’s service offerings will include mobility, basic voicemail, voice message notification, numeric paging, call forwarding (immediate, busy, no answer), three-way calling, call waiting, premium voice mail, voice dial, and two-way Short Message Service (“SMS”). Consumers will be able to choose the services that best suit their communications needs.

As the FCC recently observed, provision of competitive service creates incentives to “ensure that quality services are available at ‘just, reasonable, and affordable rates.’”⁸ As a

⁷ *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, Memorandum Opinion and Order*, CC Docket 96-45, DA 00-2896 (December 26, 2000) (“*Wyoming Order*”), 16 FCC Rcd 48, 55; *aff’d*, *Petitions for Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (October 19, 2001), at ¶19.

⁸ *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama, Memorandum Opinion and Order*, CC Docket No. 96-45, DA 02-3317, (Dec. 3, 2002) at ¶25, quoting 47 U.S.C.

result of Saipancell's designation, MTC will be motivated to make new investments in plant, deploy innovative technologies more quickly, and introduce bundled service offerings and lower prices to compete with Saipancell and retain and attract customers. In addition, MTC's wireless network is a valuable competitive asset, which, if properly deployed, will provide MTC customers with improved choices.⁹

Saipancell will spend every dollar of available support to construct new facilities and maintain and improve its network. The company has every incentive to meet its commitment because use of such funds in this manner will improve its competitive position in the marketplace. Upon receipt of ETC designation, Saipancell plans to immediately construct two to three cell sites on the island of Rota and one cell site on Tinian. In addition, Saipancell will use high-cost funding to update and improve existing facilities in order to improve the quality and reliability of its service offering. Saipancell has every incentive to maintain or improve reliability and to lower its prices over time because it can only receive high-cost support when it has a customer. The Washington Utilities and Transportation Commission emphasized this point in a recent ETC decision, finding:

§214(e)(6) ("*Cellular South Order*").

⁹Saipancell does not know whether MTC's ETC designation extends to its wireless network. If it does not, MTC is free to obtain ETC status for its wireless business.

Price is an essential element of competition. Customers will choose to take service from RCC if the price is right, and will not do so if it is too high. If no customers choose its services, then RCC will not receive federal universal service support.¹⁰

Saipancell has no choice but to offer its services at competitive, affordable prices.¹¹

C. High-cost support is essential to furthering competition in rural areas.

The Commission must take into account the fact that no carrier is capable of competing for local exchange customers in many rural areas unless high-cost loop support is provided. While CLECs and wireless carriers have had marginal success in cities, competitive carriers have not constructed facilities in rural areas of sufficient quality to compete for local exchange customers. Rural ILECs retain 98-99% of the local exchange marketplace. There can be only one reason: in many rural areas, sufficient facilities, wireline or wireless, to provide customers with acceptable service quality cannot be constructed unless high-cost support is made available. Without high-cost loop support, a wireless carrier will not be able to deliver the kinds of services, over a robust network, which would be capable of providing customers with a meaningful choice of service providers.

¹⁰*RCC Minnesota, Inc., d/b/a Cellular One, Order Granting Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. UT-023033 (Aug. 14, 2002), ¶53.

¹¹Indeed, with respect to a non-dominant competitive company the FCC has recognized, “If it charges unreasonably high rates or imposes unreasonable terms or conditions in conjunction with the offering, it would lose its market share as its customers sought out competitors whose prices and terms are more reasonable.” *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order*, 85 FCC 2d 1, 31 (1980).

Many of the rural areas currently served by incumbents would today be unserved without high-cost support. Rota is a perfect example. In order to commit to serve the island, several cell sites must be constructed in areas that have no electricity. Diesel generators must power the sites around the clock. The population includes a substantial number of migrant agricultural workers who rarely, if ever, use telephone service. The cost of transporting traffic from Rota is very high because MTC controls the sole undersea cable route. MTC also controls the only operating wireless facility on Rota. As a result, no other carrier has attempted to operate there, despite the fact that at least eight FCC licenses (two cellular and six PCS) are issued or available. Without high-cost support, there is no possibility of operating a stand-alone telephone business on the island. Designating Saipancell as a competitive ETC will enable the company to invest high-cost support funds to provide a high-quality competitive service.

Saipancell will use high-cost support to improve its network to permit all (or nearly all) customers to choose handheld cellular service as their *primary* phone. Only then will rural subscribers enjoy the full benefit of choices now available in urban areas. If any company could compete for local exchange business against a subsidized rural ILEC without high-cost support, by now some company would have done so.

D. Designation of Saipancell would be consistent with prior Commission action.

To date, the Commission has designated a total of six wireless carriers as ETCs in five rural states/territories, finding these designations to be in the public interest.¹² Recently, the Commission found the designation of Guam Cellular and Paging, Inc. as an ETC in Guam to be in the public interest.¹³ Designation of Guam Cellular and Paging, Inc. d/b/a Saipancell as an ETC on the islands of Saipan, Tinian, and Rota would be consistent with the Commission's findings that the company is qualified to be an ETC and that the public interest will be served.

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¹² See *Wyoming Order*, *supra* n. 7; *Western Wireless Corporation*, 16 FCC Rcd 18133 (2001); *Cellco Partnership d/b/a Bell Atlantic Mobile*, 16 FCC Rcd 39 (2000); *Guam Cellular and Paging, Inc.*, CC Docket 96-45, DA 02-174 (2002) ("*Guam Cellular Order*"); *IT&E Overseas, Inc.*, 17 FCC Rcd 10620 (June 6, 2002); *Cellular South Order*, *supra* n. 8; *RCC Holdings, Inc.*, CC Docket No. 96-45, DA 02-3181 (Nov. 27, 2002).

¹³ See *Guam Cellular Order*, *supra*.

V. CONCLUSION

A grant of this Petition will benefit consumers who are bound to a monopoly service provider, artificially supported by the universal service program. With high-cost support, provided on a competitively neutral basis, consumers will enjoy increased choices and improved service from both Saipancell and MTC. A grant of this Petition will serve the public interest and Saipancell respectfully requests that it be granted at the earliest possible date.

Respectfully submitted,

Guam Cellular and Paging, Inc.

_____/s/_____
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February 10, 2003

CERTIFICATE OF SERVICE

I, Janelle Wood, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 10th day of February, 2003, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Fifth Amendment to Petition For Designation as an Eligible Telecommunications Carrier on The Islands of Saipan, Tinian and Rota* filed today to the following:

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*** Via Hand Delivery**